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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,128	10/02/2003	Jean G. Brooks	3839-001US	6021

34372 7590 04/15/2005

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/676,128

**Applicant(s)**

BROOKS, JEAN G.

**Examiner**

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-17 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-17 and 20-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

### **DETAILED ACTION**

This final Office action is in response to the amendment filed January 5, 2005 by which claims 1 and 9 were amended, claims 13, 18, and 19 were canceled and claims 21-23 were added.

#### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 10/676,128, filed on October 2, 2003.

#### ***Information Disclosure Statement***

The information disclosure statement filed October 2, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein, concerning the foreign reference, has not been considered, as evidenced by the line through the foreign reference on the attached copy of the information disclosure statement. For the reference to be considered, applicant must submit a legible copy.

It is noted that a copy of the foreign patent was received on January 5, 2005. *However*, this copy is *incomplete* in that there is no sheet which states the date, inventor, or country. Accordingly, this reference has not been considered.

***Drawings***

The new drawing sheet comprising Figure 4 was received on January 5, 2005. This drawing is approved.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The use of the recitation "to enable ready separation of said rack" renders the claim indefinite since it is unclear what is meant by this recitation, i.e., the rack is separated from what?

The term "smaller" in claim 1, line 9 is a relative term which renders the claim indefinite. The term "smaller" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. *Further*, it is unclear whether the "smaller sections" defined in line 9 are the same elements as set forth in line 2 of claim 1 and thus the metes and bounds of the claim cannot be properly ascertained since it is unclear what elements are being required in the claim.

The language of the recitation "being shaped to define an in-line position when in operable engagement" in lines 15-16 of claim 1 renders the claim indefinite since it is unclear what is meant by this language and thus what is being required by the claim.

These rejections are also applicable to claim 9.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 14-17, 20; 9-11, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,178,844 (Ward *et al.* '844) in view of U.S. Patent No. 4,462,497 (Maule '497).

Ward *et al.* '844 disclose a rectangular supporting rack comprising rounded corners (see Figure 1 between 12 and 16 in the left front corner) for use in a cooking device comprising a planar surface comprising first and second portions and a connection means (18) *adapted* to allow connection of the portions to form a unitary surface whereby the portions are *capable* of being detached from each other to reduce the overall space occupied by the rack; the portions are similar in size (see Figure 1) and different in size (see Figure 2); the rack comprises an outer frame (at 12 in Figure 1); the unitary surface is *adapted* to support items above another planar surface, such as a floor of an oven; the rack comprises a plurality of mutually engaged rods (16)

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that are perpendicularly arranged and which define a solid, i.e., strong, surface with an array of apertures

With respect to claims 5 and 6, it is noted that since the cooking device is being functionally recited, in claim 1, the reference need only *be capable* of being used with such a functionally recited element in order to meet the claim. *Thus*, Ward *et al.* '844 are considered to *be capable* of being used with an oven or a grill. Note also claims 7 and 8.

The claims differ from Ward *et al.* '844 in requiring: (a) the mutually engaged rods to have a joint that has ends smaller in diameter on one portion than the ends of the other portion so that a channel passes through each of the ends and is held in-line with a pin passing therethrough (claims 1 and 9), and (b) the rack to be made from stainless (claim 16) or aluminum (claim 17).

*With respect to (a)*, Maule '497 teaches mutually engaged rods (30 and 44) that have a joint at ends thereof whereby one (at 42) is smaller in diameter on one portion than the ends of the other portion (at 38) so that a channel passes through each of the ends and are held in-line with a pin (46) passing therethrough.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Ward *et al.* '844 with a joint as taught by Maule, for ease in use and assembly.

*With respect to (b)*, although Ward *et al.* '844 are silent as to the material used, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the rack from the specified material for ease in economy and manufacture.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward *et al.* '844 in view of Maule '497 as applied to claims 1-8, 13-17, 20; 9-11, and 21-23 above, and further in view of U.S. Patent No. 4,432,334 (Holt '334).

The claim differs from the above references in requiring the overall shape to be circular.

Holt '334 teaches that it is old to utilize a circular shape.

*Thus*, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have made the shape similar to that of a circular shape, for ease in use.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection was necessitated by the amendment to claims 1 and 9 which incorporated the general language of claim 19 thereinto, thereby changing the scope of the claims and necessitating a new grounds of rejection based upon a new combination of references.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

Jennifer E. Novosad/jen  
April 13, 2005